TABLE OF AUTHORITIES CITED

Cases	Page
Brown v. Board of Education, 344 U. S. 1	2
Commissioner v. Brown, No. 63	1, 2, 3

Textbook

Stern and Gressman, Supreme Court Practice, Third Edition, p. 151, fn. 47	2

IN THE

Supreme Court of the United States

October Term, 1964

No. 263

OSCAR C. STAHL, and SYLVIA STAHL,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners' Reply to Respondent's Memorandum in Opposition.

I

Respondent very seriously misstates the record. There were in this case two suspensions of proceedings in the court of appeals. The first, requested by respondent May 28, 1964, and ordered June 1, 1964, was for a sixty-day period. During that period the petition for certiorari in *Commissioner v. Brown*, No. 63, this Term, was granted. It would obviously have been absurd for petitioners to oppose the suspension for that short period in view of the possibility that the petition for certiorari in the *Brown* case might be denied.

The second suspension, requested by respondent July 24, 1964, and ordered July 27, 1964, was not, as re-

spondent now says, to await the disposition by this Court of the *Brown* case. It was, on the contrary, expressly requested by respondent, for a ninety-day period, *to enable this Court to act upon the very application for certiorari in this case now pending before this Court.* (See paragraph 7 of the affidavit filed by respondent with the said request for suspension.)

II

Respondent also seriously misstates the content of *Brown v. Board of Education*, 344 U. S. 1. In that case three appeals were pending before this Court, and a fourth case, *Bolling v. Sharpe*, was brought up by certiorari on this Court's own initiative, and as its reason therefor this Court there stated, at page 3:

> "The Court is of the opinion that the nature of the issue posed in those appeals now before the Court involving the Fourteenth Amendment, and also the effect of any decision which it may render in those cases, are such that it would be well to consider, simultaneously, the constitutional issues posed in the case of Bolling v. Sharpe."
>
> See also Stern and Gressman, Supreme Court Practice, Third Edition, p. 151, at fn. 47.

This Court granted certiorari in *Commissioner v. Brown* because, we presume, of the importance of the issues as presented by respondent. We ask that petitioners' case be brought up also, to be heard simultaneously, just as *Bolling v. Sharpe* was in *Brown v. Board of Education*, because of the effect of any decision which this Court may render in *Commissioner v. Brown*. This precisely was the substance of petitioners' plea in the petition filed herein, as shown in that petition, at pages 2-3.

Respondent appears to suggest that petitioners be allowed to proceed by filing a brief as *amici curiae* in *Commissioner v. Brown* and then, if this Court reverses in that case, "allowing the court of appeals *initially* to appraise the significance of the differences" in petitioners' case. (Italics supplied.) What he is implying, it seems, is that he will not oppose a subsequent petition for certiorari in petitioners' case but that, for the present, petitioners should be limited to argument on the *Brown* case.

Obviously, then, what respondent is really fearful of is the effect which simultaneous consideration of this case may have on this Court's consideration of the *Brown* case. This is all the more reason, we submit, why certiorari in this case should be granted.

Respectfully submitted,

GEORGE T. ALTMAN,
Attorneys for Petitioners.

September 1964.